IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1577 of 1990

The Managing Trustee ... Petitioner
Shri Ganpati Panchayatan Sanstha,Sangli(Orig.Plff)

V/s

Smt.Chandrabai Gundu Chavan ... Respondent
(Orig.Deft)

Shri Patil for A.K.Abhyankar for Petitioner
Shri S.S.Deshmukh i/b A.K.Abhyankar for Respondent

CORAM:S.R.SATHE,J.

DATED:27th March 2006

ORAL JUDGMENT> :-

1. By this writ petition the plaintiff landlord is challenging the order passed by the 3rd Additional District Judge, Sangli in Civil appeal No.488 of 1982 whereby, the appeal was allowed and plaintiff's suit for possession of tenanted premises was dismissed.

. For the sake of convenience hereafter the parties shall be referred to as the plaintiff and the

defendant.

. Brief facts giving rise to this writ petition are as under :-

2. The suit property situated at Sangli described in detail in para 1 of the plaint is owned by the plaintiff Trust. It was in fact really constructed for residence of a camel-man. The suit premises is admeasuring 20’ x 10’. The defendant’s husband was in service of plaintiff trust and as such the suit premises were leased out to him at monthly rent of 4 annas. After his death, his wife i.e. present defendant was accepted as a tenant.

3. It was also noticed by the plaintiff that the defendant had made an encroachment on the adjoining portion of the landed premises and was using the suit premises for keeping the cattle. She had also made dung pit at the said place. As a result of the same she was causing damage and waste to the suit property. Besides this the defendant used to abuse to the servants of the plaintiff and was causing nuisance and annoyance to the plaintiff and to the adjoining neighbours.

4. In the year 1978 or thereabout the Plaintiff Trust had one camel and they wanted the suit premises for

residence of the camel-man and for keeping the articles pertaining to the said camel. The plaintiff, therefore asked the defendant to vacate the suit premises. However, the defendant refused to do the same. The plaintiff therefore issued notice to the defendant and terminated her tenancy. In spite of the same the advocate failed to hand over the possession of the suit premises. Hence plaintiff filed Regular Civil Suit No.165 of 1978 in the Court of the Joint Civil Judge, J.D., Sangli for possession of the suit premises alleging that the suit premises are required by plaintiff for bonafide and reasonably for their use and occupation.

5. The said suit was opposed by the defendant by filing written statement. She contended that the suit premises is not required by the plaintiff and the plaintiff is having sufficient accommodation to accommodate the camel-man at such place. She also contended that if the decree for possession is passed against her it will cause greater hardship to the defendant. She, therefore, prayed for dismissal of the suit. On these pleadings the learned trial Court framed the issues. In order to prove the said claim the defendant examined Shri Shiyekar. As against this the defendant examined herself.

6. After considering the evidence on record the learned trial Judge came to the conclusion that the

plaintiff has proved that the suit premises are required by them bonafide and reasonably for their personal use and greater hardship will be caused to the plaintiff if the decree is not passed in their favour. He, therefore, decreed the suit.

7. Being aggrieved by the same the original defendant filed Regular Civil Appeal No.488 of 1982. After hearing the arguments of both the learned Advocates the larned appellate Judge came to the conclusion that the plaintiff has not proved that the suit premises are required by plaintiff bonafide and reasonably and they have also not proved point regarding hardship. It was also held that the plaintiff has failed to prove that conduct of the defendant was causing nuisance and annoyance as contemplated under Section 13(1)(c) of the Bombay Rent Act. The lower appellate court therefore allowed the appeal and set aside the decree for possession and dismissed the plaintiff's suit.

8. The above mentioned order is challenged by the plaintiff in the present writ petition. On 8-8-1990 this Court (Coram:R.A.Jahagirdar,Acting C.J.) admitted the writ petition and directed to be heard along with Second appeal No.616 of 1989.

9. In this writ petition before me the learned Advocate for the Petitioner plaintiff submitted that

the learned appellate Court has not properly appreciated the evidence on record and has wrongly held that suit premises were not required by the plaintiff bonafide and reasonably and that the plaintiff also failed to prove the ground of nuisance and annoyance.

10. As against this the learned Advocate for the Respondent supported the judgment and order passed by the appellate court.

11. It is not in dispute that the suit premises were leased out by the plaintiff to the defendant's husband and at that time he was serving with the plaintiff. Admittedly, after his death plaintiff has accepted the present defendant as a tenant. Plaintiff's witness Shiyekar has stated that the suit room was constructed for residence of a camel-man and now the said premises are required by plaintiff for accommodating their camel-man in the said premises. It is pertinent to note that even the defendant has admitted that the plaintiff owns a camel. Naturally, the plaintiff would require the suit premises for residence of camel- man and they would also require the suit room for keeping the articles in respect of camel. It is needless to say that normally the residence of camel-man should be near from the place where the camel is kept. It is not the contention of the defendant that considering this aspect the suit

premises is not convenient or is not suitable for residence of camel-man. Merely because plaintiff is having some other accommodation at other places that would not be a ground to reject the plaintiff's claim. Ultimately it is for the landlord to decide as to which of his premises are to be used by him for a particular purpose. Thus, the evidence of Shiyekar that the suit premises are required by plaintiff for accommodating their camel- man is not shaken in the cross examination. There is no reason to disbelieve the said statement of the plaintiff nor it can be said that by making such claim plaintiff is trying to evict the defendant on the false ground.

12. It must be noted that admittedly the plaintiff had in fact suggested the defendant for alternate accommodation. So, there was in fact no reason for the defendant to insist that she would reside in the suit premises. The said conduct of the plaintiff also indicates that the plaintiffs were in need of the suit premises and their claim was bonafide and reasonable. So, the finding recorded by the learned appellate Court in this behalf is not legal and correct and it is necessary to set aside the same.

13. Turning to the question of balance of convenience it must be mentioned that if the plaintiffs have kept the camel at a place which is near the suit premises then it is necessary for the camel-man to reside in

the suit premises which is in fact admittedly constructed for the residence of camel-man. So, if the suit premises are not made available to the plaintiff, greater hardship and inconvenience would be caused to the defendant. As against this, even if the defendant accepts the alternate accommodation suggested by the plaintiff that would solve the defendant's problem of residence. But it seems that the defendant has taken adamant view and refused to vacate the suit premises. So, it cannot be said that the greater hardship will be caused to the defendant if decree for possession is passed against her.

14. The plaintiff has also claimed the possession of the suit premises on the ground that the conduct of the defendant is causing nuisance and annoyance to the plaintiff and neighbours and the servants of the plaintiff. Firstly, he must be noted that defendant has made an encroachment on the adjoining portion of the suit premises. This conduct of defendant is bound to cause nuisance and annoyance and agony to the plaintiff landlord. Besides this the plaintiff's witness Shiyekar has stated that the defendant was using abusive language to the servant of the plaintiff. This conduct comes under the caption of nuisance and annoyance.

15. It has also come on record through plaintiff's witness that defendant is using the adjoining

encroached portion for keeping his cattle and she has prepared dung pit at the said place. So, such use of the plaintiff's adjoining property by the defendant is bound to cause nuisance and annoyance to the plaintiff and to the adjoining neighbours. Merely because any adjoining neighbour is not examined that does not mean that the evidence adduced by the plaintiff is not sufficient to hold that the conduct of the defendant is not amounting to nuisance and annoyance. The evidence of the plaintiff's witness Shiyekar has practically gone unchallenged. The learned trial Judge has rightly accepted the same. So, I am of considered view that the reasons given by the lower Appellate Court for rejecting the plaintiff's claim under Section 13(1)(g) as well as Section 13(1)(c) of Bombay Rent Act are not legal and correct. It is, therefore, necessary to allow the writ petition and pass a decree for possession against the defendant.

16. Hence I pass the following order :-

> Writ Petition is allowed. Rule made absolute with no order as to costs. The order passed by the Appellate Court in Civil Appeal No.488 of 1982 is set aside. The decree passed by the trial Court is restored.

(S.R.SATHE,J.)